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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183352
Party	Plaintiff The Coca-Cola Company
Correspondence Address	James Johnson Sutherland Asbill & Brennen LLP 999 Peachtree St., NE Atlanta, GA 30309 UNITED STATES James.Johnson@sablaw.com, david.weslow@sutherland.com,pguibault@na.ko.com,jodenton@na.ko.com
Submission	Motion for Sanctions
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Signature	/Jason M. Prine/
Date	06/03/2009
Attachments	Motion for Sanctions.pdf (4 pages)(83000 bytes) Johnson Declaration in Support of Motion for Sanctions.pdf (3 pages)(40184 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

**OPPOSER'S MOTION FOR ENTRY OF SANCTIONS AND FOR AN ORDER
SUSTAINING THE OPPOSITION**

THE COCA-COLA COMPANY ("Opposer") hereby respectfully requests that the Board issue an Order sustaining the opposition and entering judgment in favor of Opposer as a sanction for Applicant's failure to comply with the Board's Order, dated April 6, 2009, compelling Applicant to provide, within thirty days, responses to Opposer's long-standing Interrogatories and Document Requests.

I. BACKGROUND

On March 4, 2009, Opposer filed a Motion to Compel Applicant's responses to Opposer's First Discovery Requests, which were originally served on Applicant on December 11, 2008. See Declaration of James H. Johnson, dated June 3, 2009 ("Johnson Declaration").

On April 6, 2009, the Board issued an Order granting the Motion to Compel. The Order required Applicant to provide complete responses to Opposer's interrogatories and document requests within thirty (30) days (i.e., by May 6, 2009) and held that Opposer's Requests for Admission were deemed automatically admitted pursuant to Fed. R. Civ. P. 36(a)(3). As of May 26, 2009, Applicant still has not responded to Opposer's discovery requests despite the Board's

Order compelling its response. Johnson Decl. Applicant has neither attempted to explain its continuing failure to respond, nor has Applicant sought additional time to comply with the Board's Order. Id.

II. ARGUMENT

A. Opposer Requests that the Board Sustain the Opposition.

The Board may sustain an opposition and enter judgment against a party as a sanction for failure to abide by discovery orders. Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848 (TTAB 2000); Unicut Corp. v. Unicut, Inc., 222 USPQ 341 (TTAB 1984); Trademark Rule 2.120(g)(1); and TBMP § 527.01. Applicant's failure to timely comply with the Board's Order compelling Applicant's response to Opposer's Interrogatories and Document Requests demonstrates Applicant's unwillingness to defend this Opposition in accordance with the Federal Rules of Civil Procedure, the Trademark Office Rules, and the Board's explicit instruction embodied in its April 6, 2009 Order. See Giant Food, Inc. v. Standard Terry Mills, Inc., 231 USPQ 626, 634 (1986) (sustaining opposition as sanction for pattern of discovery abuses, including refusal to comply with discovery requests and orders). As stated in the Board's April 6, 2009 Order, Opposer's remedy lies in the entry of judgment sustaining the opposition as a sanction for Applicant's failure to comply with the Board's order and its discovery obligations.

Applicant has offered no explanation for its failure to respond to Opposer's discovery requests pursuant to the Board's Order compelling such response. Applicant also has not sought to extend the time for its compliance with the Order. The only explanation for this failure is Applicant's willful disregard for its discovery obligations under the Federal Rules of Civil Procedure, the Trademark Office Rules, and the explicit Order of the Board. Accordingly,

Opposer respectfully requests that the Board sanction Applicant by sustaining the opposition and entering judgment in favor of Opposer. Trademark Rule § 2.120(g)(2); TBMP § 527.01.

III. CONCLUSION

For the foregoing reasons and those set forth in the Johnson Declaration, Opposer respectfully requests that the Board issue an Order pursuant to Fed. R. Civ. P. 37(b)(2)(vi) entering sanctions against Applicant in the form of an Order sustaining the opposition and refusing registration of Application Serial Nos. 76/657,209 and 76/657,207. Trademark Rule 2.120(g)(2); TBMP § 527.01(b).

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

Date: June 3, 2009

By:



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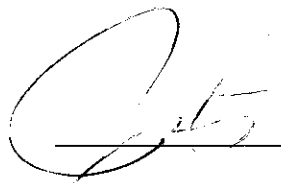
Attorneys for Opposer

THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 3d day of June, 2009, a true and correct copy of the foregoing OPPOSER'S MOTION FOR ENTRY OF SANCTIONS AND FOR AN ORDER SUSTAINING THE OPPOSITION was served on counsel for Applicant by sending the same via first class mail, postage prepaid, in an envelope addressed as follows:

Ezra Sutton, Esq.
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07905



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Opposition No.: 91183352

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**DECLARATION OF JAMES H. JOHNSON IN SUPPORT OF OPPOSER'S
MOTION ENTRY OF SANCTIONS AND FOR AN ORDER SUSTAINING THE
OPPOSITION**

I, James H. Johnson, declare that the following is true and correct pursuant to 28 U.S.C. Section 1746:

1. I am an attorney of Sutherland Asbill & Brennan LLP, counsel for THE COCA-COLA COMPANY ("Opposer"), and I make this declaration in support of its motion for an order sanctioning ROLA COLA INC. ("Applicant") in the form of an order sustaining the opposition.

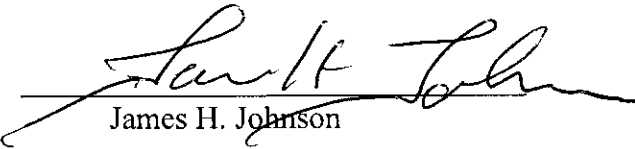
2. On or about March 4, 2009, Opposer filed a motion to compel Applicant's responses to Opposer's discovery requests, originally served December 11, 2008 and outstanding since at least January 15, 2009.

3. On or about April 6, 2009, the Board mailed an order granting the motion to compel as conceded and ordering Applicant to respond within thirty days(i.e., until May 6, 2009) to Opposer's discovery requests.

4. To date, neither Applicant, nor its counsel has responded in any form to the Board's Order of April 6, 2009 or to Opposer's outstanding interrogatories or document requests.

I declare that the foregoing is true and correct under penalties of perjury.

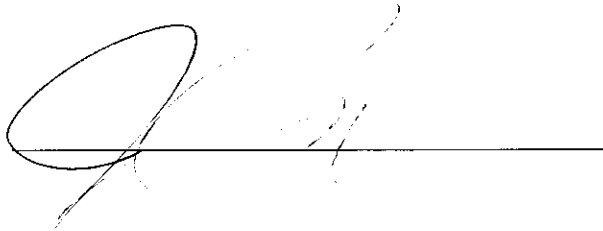
Executed on June 3, 2009 in Atlanta, Georgia.


James H. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on this 3d day of June, 2009, a true and correct copy of the foregoing DECLARATION OF JAMES H. JOHNSON IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF SANCTIONS AND FOR AN ORDER SUSTAINING THE OPPOSITION was served on counsel for Applicant by sending the same via first class mail, postage prepaid, in an envelope addressed as follows:

Ezra Sutton, Esq.
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07905

A handwritten signature in black ink, appearing to read 'Ezra Sutton', is written over a horizontal line.